

BOARD OF APPEALS ORDINANCE
OF THE TOWN OF TREMONT

Approved May 12, 1992
Amended May 10, 1994, May 9, 2000
May 15, 2001 and May 11, 2004

BOARD OF APPEALS ORDINANCE

OF THE TOWN OF TREMONT

SECTION I. GENERAL PROVISIONS

- A. Business of the Board shall be conducted in accord with Maine Statutes, Town Ordinances and the procedures adopted by the Board in its By-Laws.
- B. It shall be the responsibility of the Board to become familiar with all the duly enacted Town ordinances which it may be expected to act upon, as well as with the applicable State statutes.
- C. It shall be the responsibility of the Board to become familiar with the community goals, desires and policies as expressed in the Tremont Comprehensive Plan, and grant the minimum relief that will insure that the goals and policies of the plan are preserved and substantial justice is done.

SECTION II. APPOINTMENTS

- A. The Board shall consist of 5 members appointed by the Selectmen of the Town of Tremont for terms of 3 years. These terms shall be staggered so as to preserve continuity on the Board and shall expire on the date of the annual Town Meeting.
- B. The Selectmen shall appoint 1 alternate member to the Board for a period of one year. The alternate can participate in the meetings and hearings and may vote only in accordance with Section VII E.
- C. Neither a Selectmen nor his/her spouse may be a member or alternate member of the Board.
- D. Any member of the Board including the alternate may be removed from the Board, for cause, by the Selectmen before expiration of his/her term, but only after notice and an opportunity for a hearing at which the member in question has an opportunity to refute specific charges against him/her. The term, "for cause" shall include failure to attend 3 consecutive Board meetings or hearings without sufficient justification, or voting when the member has a "conflict of interest."
- E. When there is a permanent vacancy of either a full or alternate member, the Selectmen shall, within 60 days, appoint a person to serve for the unexpired term.

SECTION III. OFFICERS AND DUTIES

- A. The officers of the Board shall consist of a Chairman (hereinafter called "Chair") and Secretary, who shall be elected annually by a majority of the Board, and shall serve until their successors are elected.
- B. Chair. The Chair shall perform all duties required by law and the By-Laws and preside at all meetings of the Board. The Chair shall rule on issues of evidence, order and procedure, and shall take such other actions as are necessary for the efficient and orderly conduct of hearings, unless directed otherwise by a majority of the Board. The Chair shall appoint any committees found necessary to carry out the business of the Board.
- C. Secretary. The Secretary, subject to the direction of the Board and the Chair, shall insure that minutes are stored of all Board proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact. The Secretary shall also insure that property and legal notice of hearings are made, shall attend to correspondence of the Board and to other duties as are normally carried out by a secretary. All records are public and may be inspected at reasonable times.

SECTION IV. CONFLICT OF INTEREST

A. Any question of whether a particular issue involves a "conflict of interest" sufficient to disqualify a member from voting thereon, shall be decided by a majority vote of the members, except the member whose potential conflict is under consideration.

B. The term "conflict of interest" shall be construed to mean direct or indirect pecuniary interest, which shall include pecuniary benefit to any member of the person's immediate family (e.g., grandfather, father, wife, son, grandson) or to his employer or the employer of any member of the person's immediate family or any other prejudice that would prevent a Board member from rendering an unfair and/or impartial decision.

SECTION V. POWERS AND LIMITATIONS

A. The Board shall have the following powers to be exercised only upon receipt of written appeal by an aggrieved party:

1. The Board may interpret the provisions of any applicable Town ordinance which are called into question.
2. The Board may approve the issuance of a special exception permit or conditional use permit in strict compliance with any applicable Town ordinance.
3. Except as provided in subparagraph 4. below, the Board may grant a variance only where strict application of any applicable Town ordinance, or a provision thereof, to the petitioner and his property would cause undue hardship. The words "undue hardship" as used in the subsection mean:
 - a. That the land in question cannot yield a reasonable return unless a variance is granted;
 - b. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
 - c. That the granting of a variance will not alter the essential character of the locality; and
 - d. The hardship is not a result of action taken by the applicant or prior owner.
4.
 - a. The Board may grant a variance to a property owner for the purpose of making that property accessible to a person with a disability who is living on the property. The Board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the property by the person with the disability. The Board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives on the property. For the purposes of this subsection, a disability has the same meaning as a physical or mental handicap under Title 5, section 4553. The term "structures necessary for access to or egress from the property" shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure.
 - b. The Board may grant a setback variance to a property owner of a single family dwelling where the Board finds that strict application of the Zoning Ordinance would cause "undue hardship" as defined in Title 30-A, MRSA Section 4353(4-B):
 - 1) the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
 - 2) the granting of a variance will not alter the essential character of the locality;
 - 3) the hardship is not the result of action taken by the applicant or a prior owner;

- 4) the granting of the variance will not substantially reduce or impair the use of the abutting property; and
- 5) that the granting of the variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.

Additional limitations upon this variance request are:

- 1) the dwelling for which the variance is sought must be the primary year-round residence of the applicant;
 - 2) the variance may not exceed 20% of a required setback;
 - 3) the variance shall not allow any encroachment toward the water; and
 - 4) the variance may not cause the area of the dwelling to exceed the maximum permissible lot coverage.
5. The Board shall have the power to hear and determine all appeals by any person directly or indirectly affected by any decision, action or failure to act with respect to any license, permit, variance or other required approval, or any application therefor, including the grant, conditional grant, denial, suspension or revocation of any such license, permit, variance or other approval (hereinafter a "Decision"):
- a. rendered by the Code Enforcement Officer or the Planning Board pursuant to the Tremont Zoning Ordinance;
 - b. rendered by the Planning Board or the Selectmen pursuant to the Subdivision Ordinance of the Town of Tremont or the Maine subdivision statute;
 - c. rendered by the Planning Board or the Road Commissioner pursuant to the Road Ordinance of the Town of Tremont;
 - d. rendered by the Planning Board or the Code Enforcement Officer pursuant to the Floodplain Management Ordinance for the Town of Tremont;
 - e. may act as a Board of Assessment Review as stated in Title 30-A Section 2526. In such appeals both the appellant and the assessor shall submit comparables.

SECTION VI. MEETINGS

- A. A meeting of the Board shall be held once each quarter or as needed.
- B. The annual organizational meeting of the Board shall be the first regular meeting after the Annual Town Meeting.
- C. Special meetings of the Board may be called by the Chair. At least 48 hours written notice of the time, place and business of the meetings shall be given each member of the Board and to the Town Manager;
- D. The Chair shall call a special meeting within 10 days of receipt of a written request from any 3 members of the Board which request shall specify the matters to be considered at such special meeting.
- E. The order of business at regular meetings of the Board shall be as follows: (1) roll call; (2) reading and approval of the minutes of the preceding meeting; (3) action on held cases; (4) public hearing (when scheduled); (5) other business; and (6) adjournment.

F. All meetings of the Board shall be open to the public, except executive sessions. No votes may be taken by the Board except in public meeting. Deliberations may be conducted in executive sessions on the following matters and no others (as defined by Title I, Section 405);

1. consultation between the Board and its legal counsel concerning litigation or other legal matters where premature general public knowledge would clearly place the Town or Board at a substantial disadvantage; and
2. discussion or consideration of the appointment, duties, disciplining, resignation or dismissal of a Board member.

SECTION VII. VOTING

- A. A quorum shall consist of 3 members of the Board.
- B. No hearing or meeting of the Board shall be held, nor any action taken, in the absence of a quorum; however, those members present shall be entitled to request the Chair to call a special meeting for a subsequent date.
- C. All matters shall be decided by a roll call vote. Decisions on any matter before the Board shall require the affirmative vote of a majority of the members present at the hearing.
- D. If a member has a conflict of interest, said member shall not be counted by the Board in establishing the quorum for such matter.
- E. The Chair shall appoint an alternate member to act for a regular member who is: disqualified from voting, unable to attend the hearing, or absent from a substantial portion of the hearing due to late arrival. The alternate member will act for the regular member until the case is decided.
- F. No member shall vote on the determination of any matter requiring public hearing unless he/she has attended the public hearing.

SECTION VIII. APPEAL PROCEDURE

- A. Any person aggrieved by an action which comes under the jurisdiction of the Board pursuant to Section V of this Ordinance must file such application for appeal, in writing on forms provided, within 30 days of the granting or denial of a permit. The applicant shall file this appeal at the Town Office, setting forth the grounds for his/her appeal. Upon receiving the application for appeal, the Town shall notify the Chair of the Board.
- B. The fee to accompany applications for appeal shall be \$50.00. Checks are to be made payable to the Town of Tremont unless the appeal is to the Board of Assessment Review which requires no fees.
- C. Any extraordinary expense necessitated as part of the hearing shall be borne by the applicant.
- D. All written materials and exhibits in support of the appeal must be filed 7 days before the hearing, and opposing party may file a response to such materials 3 days before the hearing. No exhibits or other written materials that were not filed within these time limits shall be admitted at the hearing except by leave of the Chair for good cause shown.

SECTION IX. HEARINGS

- A. The Chair shall schedule a date for the public hearing within 60 days of receipt of an appeal request..

B. The Board shall cause notice of the date, time and place of such hearing, the location of the building or lot, and the general nature of the question involved, to be given to the person making the application and to be published in a newspaper of general circulation in the Town, at least 2 times, the date of the first publication to be at least 10 days prior to the hearing unless the appeal is to the Board of Assessment Review in which case publication is not required. The Board shall also cause notice of the hearing to be given to the Selectmen and Town Manager, the Planning Board, the Code Enforcement Officer, and the owners of property abutting that for which the appeal is taken at least 10 days prior to the date of the hearing unless the appeal is to the Board of Assessment Review in which case such notification is not required.

C. The Board shall provide as a matter of policy for exclusion of irrelevant, immaterial or unduly repetitious evidence.

D The order of business at a public hearing shall be as follows:

1.. The Chair calls the hearing to order.

2. The Chair determines whether there is a quorum.

3. The Chair gives a statement of the case and reads all correspondence and reports received.

4. The Board determines whether it has jurisdiction over the appeal.

5. The Board decides whether the applicant has "standing" before the Board.

6. The Board determines which individuals attending the hearing are "interested parties." "Interested parties" are those persons who request to offer testimony and evidence and to participate in oral cross-examination. They would include but are not limited to abutting property owners and those who might be adversely affected by the Board's decision. Parties may be required by the Board to consolidate or join their appearances in part or in whole if their interests or contentions are substantially similar and such consolidation would expedite the hearing. Municipal officers, the Planning Board, and the Code Enforcement Officer shall automatically be made parties to the proceeding.

7. The appellant has the burden of proof and is given the opportunity to present his or her case without interruption.

8. The Board, and "interested parties" may ask questions of the appellant through the Chair where a hearing *de novo* is being conducted.

9. The "interested parties" are given the opportunity to present their case. The Board may call its own witnesses, such as the Code Enforcement Officer.

10. The appellant may ask questions of the "interested parties" and Board witnesses directly where a hearing *de novo* is being conducted.

11. All parties are given the opportunity to refute or rebut statements made throughout the hearing.

12. The Chair shall receive comments and questions from all observers and interested citizens who wish to express their views.

13. The hearing is closed after all parties have been heard. If additional time is needed, the hearing may be continued to a later date. All participants shall be notified of the date, time and place of the continued hearing.

E. The Board may waive any of the above rules if good cause is shown.

SECTION X. DECISIONS

A. Decisions by the Board shall be made not later than 35 days from the date of the final hearing.

B. The final decision on any matter before the Board shall be made by written order signed by the Chair. The transcript or tape recording of testimony, if such a transcript or tape recording has been prepared by the Board, and the exhibits, together with all papers and requests filed in the proceedings, shall constitute the record. All decisions shall become a part of the record and shall include a statement of Findings of Fact and Conclusions where a hearing *de novo* is being conducted. When there is no *de novo* hearing, the written order shall state the reasons for its decision.

C. The Board, in reaching said decision, shall be guided by standards specified in the applicable State laws, local ordinances, policies specified in the Comprehensive Plan and by Findings of Fact by the Board in each case.

D. In reviewing an application on any matter, the standards in any applicable local ordinance or statute shall take precedence over the standards of these rules whenever a conflict occurs. In all other instances, the more restrictive rule shall apply.

E. The Board may reverse the decision of the Code Enforcement Officer or Planning Board, or direct the Code Enforcement Officer or Planning Board to act only upon finding that:

- 1) In the case of the Code Enforcement Officer's decisions, after hearing *de novo*, that the appellant is entitled to relief based upon the evidence adduced and the findings of the Board as applied to the respective Ordinance under which appeal is taken; or
- 2) In the case of the Planning Board, that the decision or failure to act was clearly contrary to the provisions of the Ordinance under which appeal is taken, or is not supported by substantial evidence on the record.

E-1. Board of Assessment Review hearings:

The Board of Assessment Review hearings conducted by the Board of Appeals are mixed *de novo* and appellate hearings as set forth in Title 36 M.R.S.A. § 843.

F. Notice of any decision shall be sent by certified or registered mail or hand delivered to the applicant, his representative or agent, the Planning Board, the Code Enforcement Officer, and the Town officers within 7 days of the decision.

G. Decision of the Board shall be immediately filed in the Town Office and shall be made public record. The date of filing of each decision shall be entered in the official records and minutes of the Board.

H. Unless otherwise specified, any order or decision of the Board for a permitted use shall expire if a building permit for the use is not obtained by the applicant within 90 days from the date of the decision; however, the Board may extend this time an additional 90 days.

SECTION XI RECONSIDERATIONS

A. The Board may reconsider any decision. The Board must decide to reconsider any decision, notify all interested parties and make any change in its original decision within 30 days of the date of the vote on the original decision. A meeting to decide whether to reconsider shall be called by the Chair in accordance with Section VI of this Ordinance. The Board may conduct additional hearings and receive additional evidence and testimony.

B. Reconsideration should be for one of the following reasons:

1. The record contains significant factual errors due to fraud or mistake, regarding facts upon which the decision was based; or
2. The Board misinterpreted the Ordinance, followed improper procedures, or acted beyond its jurisdiction.

SECTION XII. APPEAL TO SUPERIOR COURT

The decision of the Board of Appeals may be taken, within 45 days of the date of the vote on the original decision, by any party to Superior Court in accordance with the Maine Rules of Civil Procedure, Rule 80B. This time period may

be extended by the Court upon motion for good cause shown. The hearing before the Superior Court must be without a jury.

SECTION XIII. SEVERABILITY

The invalidity of any section or provision of this Ordinance shall not be held to invalidate any other section or provision within the Ordinance.

This Board of Appeals Ordinance originally passed at Town Meeting, 5/12/1992; amended at Town Meeting 5/10/1994 (Section V(4)a & b). Several housekeeping amendments passed 5/9/2000 Town Meeting. *De novo* language inserted along with housekeeping amendments inserted 5/15/2001.